

This policy supersedes the sick leave fund policy dated 12/11/07.

- I. POLICY AND OBJECTIVES
- II. DEFINITIONS
- III. SICK LEAVE FUND STRUCTURE
- IV. GENERAL PROVISIONS
- V. PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS
- VI. SICK LEAVE FUND GRANT PROCEDURES
- VII. SICK LEAVE FUND ENROLLMENT AND MEMBERSHIP
- VIII. ELIGIBILITY REQUIREMENTS TO RECEIVE SICK LEAVE FUND GRANTS
- IX. ADDITIONAL SICK LEAVE FUND CONTRIBUTIONS
- X. DIRECT GRANT PROCEDURES
- XI. ELIGIBILITY REQUIREMENTS TO MAKE A DIRECT GRANT
- XII. ELIGIBILITY REQUIREMENTS TO RECEIVE A DIRECT GRANT

## **I. POLICY AND OBJECTIVES**

- A. The state of Montana allows the sharing of accrued sick leave between employees and the pooling of sick leave, consistent with this policy. Shared and pooled sick leave may then be available to qualifying employees.
- B. Nothing in this policy guarantees that an agency shall approve a leave of absence, and nothing in this policy guarantees direct grants of sick leave or grants of sick leave from the sick leave fund.
- C. This policy establishes the structure of the sick leave fund, and the eligibility requirements and procedures used to administer both the sick leave fund and direct grants of sick leave.
- D. Funds may not be attached to any hours of sick leave that are:
  - 1. donated to the sick leave fund;
  - 2. received as grants from the sick leave fund; or
  - 3. donated or received as direct grants.
- E. The agency employing the recipient of a sick leave fund grant or direct grant shall pay all costs of the use of that sick leave.

## **II. DEFINITIONS**

As used in this policy, the following definitions apply:

- A. "Agency" means any legally constituted department, board, or commission of state government as provided in 2-18-601, MCA.

- B. "Contribution" means a voluntary and irrevocable contribution of accrued sick leave an employee donates directly to another employee or to the sick leave fund or of accrued annual leave an employee donates directly to the sick leave fund.
- C. "Department" means the department of administration.
- D. "Direct Grant" means a grant of sick leave credits that other employees donate from their accrued sick leave balances to an eligible employee.
- E. "Employee" means any person employed by any agency except elected state officials and persons contracted as independent contractors or hired under personal services contracts, as provided in 2-18-601, MCA. Under this policy, a short-term worker is not an employee.
- F. "Extensive illness or accident" means an illness, injury, disability as defined in the disability and maternity leave policy, or quarantine that incapacitates an employee for 10 or more consecutive working days.
- G. "In a pay status" means the hours an employee is paid at the regular rate up to a maximum of 40 hours in a workweek. This includes hours an employee is paid for annual leave, sick leave, holidays, and compensatory time. For the purposes of this policy, the term does not include hours that exceed 40 hours in a workweek, which are paid as overtime or recorded as compensatory time.
- H. "Participating employee" means an employee who has met the conditions specified in this policy and has become a member of the sick leave fund.
- I. "Sick leave fund" means a pool established to accumulate and disburse voluntarily and irrevocably contributed accrued sick or annual leave from state employees for the purpose of providing sick leave to participating employees.
- J. "Sick leave fund grant" means a grant of sick leave credits from the sick leave fund to an eligible participating employee.
- K. "Sick leave voucher" means any of the standardized forms created by the department of administration, which are used to initiate and monitor direct grants, membership in the sick leave fund, and sick leave fund grants.
- L. "Working Day" refers to the period of time in a pay status for an employee that is their regularly scheduled hours in a calendar day.

### **III. SICK LEAVE FUND STRUCTURE**

- A. The department shall establish and administer the state government sick leave fund.
- B. The department shall consult with the state employee group benefits advisory council (SEGBAC) regarding the administration of the sick leave fund, as provided in 2-18-618, MCA.

#### **IV. GENERAL PROVISIONS**

- A. An eligible full-time employee may receive up to a maximum of 240 hours sick leave from either the sick leave fund grants, direct grants, or a combination of both, in a 12-month period. Agencies shall calculate the 12-month period from the first day an employee uses sick leave credits obtained through the sick leave fund or direct grants. A maximum of 40 hours per pay period may be requested from the fund. If more than 40 hours per pay period is needed, a letter of hardship may be submitted to the department for up to 80 hours per pay period if other sources cannot be obtained.
- B. Agencies shall prorate the available hours for a part-time employee based on either:
  - 1. the part-time employee's regular schedule at the time the employee became qualified for a sick leave fund grant or direct grant; or
  - 2. the average amount of time the employee is in a pay status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the qualifying event an employee was in a pay status an average of 20 hours per week, the maximum available sick leave is 120 hours in a 12-month period.
- C. Except as described below, an employee may not contribute a combined total of more than 80 hours of sick and annual leave to the sick leave fund, direct grants, or a combination of both in a 12-month period unless the contribution is derived from excess annual leave that would otherwise be forfeited. If annual leave that would otherwise be forfeited is part of an employee's annual contribution, the total for that employee may include the 80 hours and any leave at risk of forfeiture. In any case, an employee's contribution cannot reduce the employee's accumulated sick leave or annual leave fund balance below 40 hours. Agencies shall calculate the 12-month period from the first day of the pay period following the pay period in which an agency removes the first contribution from the contributing employee's account.

1. Upon termination of employment, an employee may contribute any amount of sick leave and/or annual leave to the sick leave fund or any amount of sick leave to direct grants up to the maximum allowable benefit per employee. This does not apply to employees who have established a VEBA Health Reimbursement Account as provided in 2-18-1301, et al, MCA.
  2. An employee may exceed the 80-hour limit in order to make a contribution requested or required by the department as provided in Section IX of this policy.
- D. Employees may not contribute sick leave accrued prior to July 1, 1971, to the sick leave fund or use it to make direct grants.
- E. Subject to agency approval, an employee may use sick leave credits obtained from a sick leave fund grant or direct grant:
1. to provide necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Policy, MOM 3-0309;
  2. for continuing physical or mental illness, injury, disability, or treatment by a licensed health care provider that is directly related to the original reason that caused the employee to become eligible to receive a sick leave fund or direct grant;
  3. in the same pay period in which an agency adds the credits to the employee's account.
- F. If an employee is incapacitated and unable to apply for a sick leave fund grant or direct grant, another person may do so for the employee.
- G. When approving a leave of absence, a supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.
- H. Agreeing to receive a sick leave fund grant or direct grant constitutes an employee's approval, as required in 2-18-615, MCA, to use all accrued annual leave for reasons of illness.
- I. An employee's participation in the sick leave fund or the direct grant program does not prohibit agency management from taking appropriate disciplinary action due to an employee's unauthorized absence from work.

**V. PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS**

- A. An employee may not use sick leave credits from a sick leave fund grant or direct grant:
  - 1. if the employee is eligible for workers' compensation wage loss benefits;
  - 2. during a leave of absence without pay which was approved for reasons other than an extensive illness or accident or providing necessary care as described in Section IV of this policy;
  - 3. when the employee has personally accrued sick leave or compensatory time available, for example, when an employee has sick leave or compensatory time available that has accrued while the employee was using sick leave from the sick leave fund grant or a direct grant;
  - 4. retroactively to a previous pay period in which the employee was in a leave without pay status and had not yet become eligible to receive a sick leave fund grant or direct grant. Applying sick leave obtained through a sick leave fund grant or direct grant to time spent in a leave without pay status in the same pay period that the employee becomes eligible is not considered retroactive use of sick leave.
- B. If any of the above or other unforeseen reasons cause an employee to have unused sick leave credits from a sick leave fund grant or direct grant, the sick leave becomes excess sick leave and may not be used. An agency shall remove excess sick leave credits from the employee's account and return them to contributing employees or to the sick leave fund.
- C. An agency may not cash out sick leave credits according to the provisions of 2-18-618, MCA, nor convert them to a health care trust account contribution according to the provisions of 2-18-1311, MCA, if those credits were obtained through a sick leave fund grant or direct grant. On termination of employment, an agency shall remove these unused credits from the employee's account and return them to contributing employees or the sick leave fund.

**VI. SICK LEAVE FUND GRANT PROCEDURES**

- A. To request a grant from the sick leave fund, a participating employee or the employee's representative shall submit a completed sick leave voucher to the appropriate agency staff.

- B. The employing agency must certify that the participating employee meets all eligibility requirements in Section VIII of this policy.
- C. The employing agency must submit the completed sick leave fund grant request for via email or fax to the Department by the Friday proceeding the payday of the affected payroll period. The request must specify the number of hours requested.
- D. The department shall confirm that the sick leave fund contains a sufficient balance to meet the sick leave fund grant request. The department shall notify the employing agency whether the funds are available.
- E. The agency shall submit a copy of the certified sick leave voucher to the department of administration.
- F. The employing agency is responsible for adding the sick leave credits to the employee's account. Agency employees should add approved sick leave credits to the employee's account on an as needed basis, which is typically at the end of each pay period.
- G. When an employee contributes annual leave to the sick leave fund, the contribution converts to sick leave credits when an agency removes the annual leave from the employee's account

## **VII. SICK LEAVE FUND ENROLLMENT AND MEMBERSHIP**

- A. Any permanent or seasonal employee as defined in 2-18-601, MCA, who meets the requirements in this policy may enroll in the sick leave fund at any time.
- B. To enroll in the sick leave fund, a permanent or seasonal employee shall:
  - 1. have completed the 90-day qualifying period to take sick leave, as provided in 2-18-618, MCA;
  - 2. submit a completed sick leave voucher to the appropriate agency staff that shows a full-time employee is making an initial contribution of at least 8 hours of accrued sick or annual leave to the sick leave fund. Agencies shall prorate the initial contribution to the sick leave fund for a part-time employee based on either:
    - a. the part-time employee's regular schedule at the time the employee makes the initial contribution; or
    - b. the average amount of time the part-time employee is in a pay status when management cannot determine or has not assigned a

regular schedule. For example, if during the two or more pay periods preceding the initial contribution a part-time employee was in a pay status an average of 20 hours per week, the employee's minimum initial contribution is 4 hours.

- C. A contribution to the sick leave fund may not reduce a full-time employee's balance of sick leave or annual leave below 40 hours. Agencies shall prorate the minimum balance for a part-time employee based on either:
  - 1. the part-time employee's regular schedule at the time the employee makes the initial contribution; or
  - 2. the average amount of time the employee is in a pay status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the initial contribution a part-time employee was in a pay status an average of 20 hours per week, the employee shall keep a total minimum balance of 20 hours of each sick leave and annual leave following the contribution.
- D. Each employing agency shall certify an employee meets the eligibility requirements of this policy. Each agency is responsible for deducting sick leave fund contributions from an employee's sick leave and/or annual leave accounts. Employing agencies shall submit completed sick leave vouchers to the department.
- E. All contributions to the sick leave fund are voluntary and irrevocable.
- F. An employee remains a member of the sick leave fund unless or until the employee:
  - 1. fails to authorize an additional contribution;
  - 2. terminates employment with state government; or
  - 3. resigns in writing from the fund.

#### **VIII. ELIGIBILITY REQUIREMENTS TO RECEIVE SICK LEAVE FUNDGRANTS**

- A. To be eligible to receive a grant from the sick leave fund, an employee shall have:
  - 1. met the 90-day qualifying period to take sick leave, as provided in 2-18-618, MCA;

2. suffered an extensive illness or accident or provided necessary care as defined in Section IV, which resulted in the employee's absence from work of no less than 10 consecutive working days;
  3. used all available accrued sick leave, annual leave, other accrued paid leave, and compensatory time;
  4. received approval from the supervisor for leave of absence;
  5. received approval from the agency head or designee to receive a sick leave fund grant;
  6. when requested by the employing agency, provided a physician's certification of extensive illness or accident; and
  7. been a member of the sick leave fund for at least 90 calendar days. The 90-day period begins on the first day of the pay period following the pay period in which the participating employee's initial sick leave fund contribution was deducted from the employee's sick or annual leave accounts.
- B. Meeting the eligibility requirements of this policy does not guarantee that an employing agency head or designee will approve the employee's use of a sick leave fund grant.

#### **IX. ADDITIONAL SICK LEAVE FUND CONTRIBUTIONS**

- A. The department shall suspend approval of sick leave fund grants when the sick leave fund balance falls below 1,000 hours. If this occurs, the department may request or require additional employee contributions as described in section C below.
- B. If the department requires additional contributions, it shall determine the amount of sick leave or annual leave needed from each participating employee to maintain the solvency of the sick leave fund.
- C. Participating employees may authorize any required additional contribution within 45 days by submitting a completed sick leave voucher to the appropriate agency staff, except as provided in paragraph D.
  1. If a participating employee does not submit a completed sick leave voucher authorizing a required contribution, the department shall terminate the employee's membership in the sick leave fund.



2. The employee may be eligible to rejoin the fund at a later time. An employee who rejoins the sick leave fund must meet all initial membership requirements provided in Section VII and wait 90 days from the date the employee rejoins the fund to become eligible to receive a sick leave fund grant.
- D. The department may not require an additional contribution from participating employees who are using or have used their sick leave as a result of an extensive illness or accident or to an extent that reduces the annual or sick leave below levels specified in section VII. C. The employing agency shall notify the department about these employees within 45 days of the date the department requires additional contributions under this policy.

#### **X. DIRECT GRANT PROCEDURES**

- A. An employee who chooses to make a contribution of sick leave under the direct grant program shall submit a completed sick leave voucher to the appropriate agency staff.
- B. The contributing employee's agency shall certify:
  1. the contributing employee has met the eligibility requirements to make a direct grant, as defined in Section XI; and
  2. the agency has deducted the appropriate hours from the contributing employee's sick leave account.
- C. If the direct grant recipient is in a different agency than the contributing employee, the contributing employee's agency shall submit a copy of the sick leave voucher to the recipient employee's agency. If the direct grant recipient is in the same agency as the contributing employee, the agency shall follow the recipient agency procedures described in Sections D and E below.
- D. The recipient agency shall certify that the recipient employee meets the eligibility requirements in Section XII.
  1. If the employee meets the eligibility requirements, the recipient agency is responsible for adding the sick leave credits to the recipient employee's account. Recipient agencies should add approved sick leave credits to the employee's account on an as-needed basis at the end of each pay period.
  2. If the employee is ineligible, the recipient agency shall return the voucher to the contributing employee's agency to re-credit the contributing employee's sick leave balance.

- E. For record keeping purposes, recipient agencies must submit copies of certified sick leave vouchers for completed direct grant transactions to the department of administration.

## **XI. ELIGIBILITY REQUIREMENTS TO MAKE A DIRECT GRANT**

- A. To be eligible to make a direct grant of sick leave, an employee shall:
  - 1. have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA; and
  - 2. A contribution to a direct grant may not reduce a full-time employee's balance of sick leave below 40 hours. Agencies shall prorate the minimum balance for a part-time employee based on either:
    - a. the part-time employee's regular schedule at the time the employee makes the initial contribution; or
    - b. the average amount of time the employee is in a pay status when management cannot determine or has not assigned a regular schedule. For example, if during the two or more pay periods preceding the contribution a part-time employee was in a pay status an average of 20 hours per week, the employee shall keep a minimum balance of 20 hours of sick leave following the contribution.
- B. A terminating employee's eligibility to make a direct grant also depends on the recipient employee's eligibility to receive a direct grant. The recipient employee must be eligible to receive a direct grant in the same pay period in which the direct grant is made.
- C. Participation in the sick leave fund is not a requirement to make a direct grant.
- D. An eligible employee may make a direct grant of sick leave to an eligible employee of any state agency.

## **XII. ELIGIBILITY REQUIREMENTS TO RECEIVE A DIRECT GRANT**

- A. To be eligible to receive a direct grant of sick leave, an employee shall have:
  - 1. met the 90-day qualifying period to take sick leave as provided in 2-18-618, MCA;

2. suffered an extensive illness or accident or provided necessary care as defined in Section IV, which resulted in the employee's absence from work of no less than 10 consecutive working days;
  3. used all available accrued sick leave, annual leave, other accrued paid leave, and compensatory time;
  4. received approval from the supervisor for leave of absence;
  5. received approval from the agency head or designee to receive a direct grant of sick leave; and
  6. when requested by the employing agency, provided a physician's certification of extensive illness or accident.
- B. Participation in the sick leave fund is not a requirement to receive a direct grant.
- C. Meeting the requirements of this policy does not guarantee that the employing agency head or designee will approve the employee's use of a direct grant.

Please refer questions about the implementation of this policy to your agency's human resources office. For additional information, see the following related material:

MOM Policy 3-0305 Annual Leave  
MOM Policy 3-0309 Family and Medical Leave  
MOM Policy 3-0310 Sick Leave